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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION THREE

ANDREA LUQUETTA et al.,
Plaintiffs and Respondents,
v.
THE REGENTS OF THE UNIVERSITY
OF CALIFORNIA,
Defendant and Appellant.

A128882

(San Francisco County
Super. Ct. No. CGC-05-443007)

This appeal arises out of a class action against The Regents of the University of California (Regents or University) on behalf of a class of professional degree students. The plaintiffs claim the University breached an implied contract when it raised the professional degree fee (sometimes referred to as PDF) for continuing students. The trial court granted summary judgment for the class of professional degree students, concluding that class members who accepted the University's offer of admission before August 25, 2003, had a reasonable expectation the professional degree fee would remain the same for the duration of their enrollment in their professional degree programs.

In *Kashmiri v. Regents of the University of California* (2007) 156 Cal.App.4th 809, 819 (*Kashmiri*), Division Two of this court addressed a similar question with respect to students who first enrolled in their respective professional degree programs before December 16, 2002. The *Kashmiri* court concluded the promise not to raise the professional degree fee for continuing students—as contained in the University's official fee guide and other University publications—became a binding and enforceable term of

an implied contract at the time the students accepted the University's offer of admission. (*Id.* at pp. 829, 833.)

The University contends there are critical differences between the facts presented in *Kashmiri* and those presented here. Among other things, they claim the trial court relied almost entirely upon two sentences contained in the official fee guide for the academic year preceding the one for which class members sought to be admitted. They point out that the University's official fee guide for the 2003-2004 academic year—which was first published on August 25, 2003—explicitly stated that increases in the professional degree fee applied to all students, both incoming and continuing. However, as the trial court recognized in rejecting the University's contention, the last publicly available edition of the official fee guide at the time class members accepted admission described the longstanding policy not to raise the professional degree fee for the duration of a student's enrollment.

In addition to challenging the trial court's order granting summary judgment, the University also claims the court erred in adopting an improper measure of damages and abused its discretion in certifying a class. We affirm the judgment.

FACTUAL AND PROCEDURAL BACKGROUND

Professional Degree Fee

The Regents establish the fee policies and set the fee amounts charged to students who attend professional degree programs at the University (also referred to herein as UC). The UC institutions charging the fees at issue in this lawsuit include UC Berkeley, UC Davis, UC Irvine, UC Los Angeles (UCLA), UC Riverside, UC San Diego, UC San Francisco (UCSF), and UC Santa Cruz.

Students enrolled in certain professional degree programs are assessed a professional degree fee, or PDF, in addition to other systemwide fees. The Regents first approved the imposition of a professional degree fee, also referred to as the "Fees for Selected Professional School Students," at a meeting held on January 21, 1994. The Regents approved a policy establishing that, effective Fall 1994, students in certain professional degree programs would be assessed a professional degree fee in addition to

other systemwide fees and that the fee would be phased in over time. At the same time, a majority of the Regents also adopted a resolution that, effective Fall 1994, “[t]he level of the Fee for Selected Professional School Students remain the same for each student for the duration of his or her enrollment in the professional degree program, with increases in the fee applicable to new students only, until such time as the fee for each professional program reaches approximately the average of fees charged for that program by comparable high-quality institutions across the nation.”

In its 2003-2004 annual budget, which was first published on the UC Office of the President Web site in November 2002, the University explained the professional degree fee policy as follows: “In January 1994, The Regents approved a Fee Policy for Selected Professional School Students. In approving the new fee policy, the University reaffirmed its commitment to maintain academic quality and enrollment in the designated professional school programs and recognized that earning a degree in these programs benefits the individual as well as the state. The policy provides that the fee for each selected professional program is to be phased in to approximately the average of fees charged for that program by comparable high quality institutions across the nation. Until the fee is fully phased in, the level of the fee remains the same for each student for the duration of his or her enrollment in the professional degree program, with increases in the fee applicable to new students only.”¹

¹ Notwithstanding the University’s own characterization of its professional degree policy in its budget documents, it contends there was no “policy” to maintain the professional degree fee at the same level for continuing students. Instead, it claims the “policy” was simply to impose a professional degree fee and to phase it in over time. Indeed, the “Policy on Fees for Selected Professional School Students” approved on January 21, 1994, did not contain any language committing the University to maintain the professional degree fee at the same level for continuing students. However, as the University acknowledges, at the same 1994 meeting at which the Regents enacted the professional degree fee policy they also approved a resolution providing that increases in the professional degree fee would be applied to new students only and that the fee would remain at the same level for the duration of a student’s enrollment in a professional degree program. The University refers to this as the “PDF resolution” to distinguish it from the “Professional Degree Fee Policy.” As will be demonstrated, the critical point is

Class Members' Application Cycle

Students who attend professional degree programs at UC institutions generally apply for, are offered, and accept admission during the academic year preceding the academic year during which they start their program. For each program, application materials for those seeking to enroll in Fall 2003 were first made available to class members between June and October 2002, with the exception of medical school at UC Riverside, which made the application available on December 4, 2002. The initial deadlines to apply for admission for Fall 2003 generally ranged from October 1, 2002, to May 1, 2003, with some schools setting later deadlines for subsequent rounds of admissions.

Applicants for the 2003-2004 academic year who received offers of admission from the University began accepting the offers as early as October 8, 2002. As a result of the class definition, every member of the class accepted the University's offer of admission before August 25, 2003. The first day of classes for incoming students who were beginning their professional degree programs in the 2003-2004 academic year ranged from August 18, 2003, through September 26, 2003. Therefore, the vast majority of the class members applied for, were offered, and accepted admission during the 2002-2003 academic year.²

UC Publications Discussing Professional Degree Policy

The University makes information regarding its policies available to the public, including prospective students, on Web sites and in University publications. The UC Office of the President publishes an online guide to student fees and deposits for all UC institutions that is “the official guide for all University departments in the area of

not whether the Regents' decision to maintain the professional degree fee at a constant level for continuing students was an official “policy” or resulted from a resolution. Rather, the relevant consideration is how the decision was conveyed to prospective students.

² The only exception is a very small number of students who applied before the 2002-2003 academic year and deferred their enrollment until the 2003-2004 academic year or thereafter.

general University fees and deposits and miscellaneous University fees for which Regental or Presidential approval is required.’ ” We shall refer to this online guide as the “official fee guide,” which is the term used by both the trial court in its order and the parties in their “Stipulated Statement of Facts Admitted as True.”³ The University publishes the official fee guide annually. During the time period that vast majority of class members accepted the University’s offers of admission, the UC Office of the President Web site included links to the official fee guides for academic years 1996-1997 through 2002-2003.

The first page of each official fee guide contains the disclaimer, “Fees are subject to change without notice.” Each official fee guide contains a section entitled, “Fees for Selected Professional School Students,” which includes a description of the professional degree fee and sets forth the amount to be charged at each program in the UC system.

Through August 2003, the “Fee for Selected Professional Students” section of the official fee guide for the years 1996-1997 through 2002-2003 began with the following statement: “In addition to the Educational Fee, the University Registration Fee, and miscellaneous campus based fees, *effective Fall 1994*, a Fee for Selected Professional School Students also is assessed to students enrolled for the first time in the graduate professional degree programs listed below. The Fee is being phased in over time. *Increases in the Fee apply to new students only. The Fee will remain the same for each student for the duration of his or her enrollment in the professional degree program.*” (Italics added.)

As noted above, the University’s 2003-2004 annual budget, available on the same University Web site as the official fee guides, described the University’s policy with regard to the professional degree fee as one in which the level of the fee would remain

³ In its briefing on appeal, the University refers to the guide as the “annual fee guide,” presumably to support its claim that the guide applies only to the year in which it is published. However, while it is the case that each official fee guide references a specific academic year, the University has not pointed to anything in the record that would support a claim that the official title or commonly known name of the guide is “annual fee guide.”

the same for each student for the duration of that student's enrollment. This same policy statement appeared in annual budgets dating back to the 1997-1998 annual budget.

In addition to the centralized, University-wide official publications, certain print or web-based publications produced by Boalt Hall School of Law (Boalt Hall) and the UCSF School of Nursing reiterated the University's policy regarding increases in the professional degree fee. In the case of Boalt Hall, the 2003 Catalog, which contained the application for enrollment beginning in the 2003-2004 academic year, stated as follows: "The professional degree fee is one component of the total fees. The professional degree fee remains at the same level for the three years in which the student is enrolled in the program. Other components of total fees, however, could change." Similarly, the 2003-2004 Boalt Hall Student Resource Guide stated that "[f]or students entering in 2003-04, the professional degree fee is \$7,200 per year, and it will remain at that level for their three years in the J.D. Program." In the case of the UCSF School of Nursing, the Web site for that school contained the following statement at all relevant times through at least August 2003: "The fee for selected professional school students is assessed to new students enrolled in their first graduate professional degree program. The level of this fee remains the same for each student for the duration of his or her enrollment, with increases applicable to new students only."

Other than the Boalt Hall 2003 Catalog and the 2003-2004 Student Resource Guide produced by Boalt Hall, no other printed catalog from an individual professional degree program for the 2003-2004 academic year stated that the professional degree fee would remain at the same level for the duration of a student's enrollment in the program. In addition, there is no evidence that any Web site for a UC professional degree program for the 2003-2004 academic year—other than the UCSF School of Nursing Web site—contained the statement that the professional degree fee would remain constant for the duration of a student's enrollment.

December 2002 and July 2003 Increases in the Professional Degree Fee

From Fall 1994, when professional degree fees were first imposed, until the 2002-2003 academic year, the University consistently adhered to its policy of applying

increases in the professional degree fee to incoming students only. The Regents increased the professional degree fee three times during this period. Each time the increases applied only to incoming students.

In December 2002, faced with a budget shortfall, the Regents increased professional degree fees by up to \$400 for the Spring 2003 term and imposed those increases on continuing students. At the same time, the Regents also increased other fees systemwide, including an increase of \$135 in the educational fee paid by all students. On the “UC Newsroom” section of the University’s Web site, the University posted an article on December 16, 2002, discussing the fee increases entitled, “REGENTS CUT 2002-03 UC BUDGET, APPROVE \$135 STUDENT FEE INCREASE BEGINNING SPRING 2003.” The University also posted information about fee increases on the University Web site in January 2003 under the heading, “Q&A on Student Fees.” In the University’s description of the fee increases in these two Web site postings, the University did not mention the longstanding policy that applied increases in the professional degree fee to new students only, did not explain that the University had changed or rescinded that policy, and did not discuss whether the University would adhere to that policy in the future. After the December 2002 fee increases, the University continued its online publication of the official fee guides and budget documents, which stated that the University would apply increases in the professional degree fee to new students only.

On July 17, 2003, the Regents voted to increase the professional degree fee by 25 percent for all enrolled students for the 2003-2004 academic year. The Regents also voted to delegate to the UC President the authority to impose an additional 5 percent increase, which the President later imposed as to certain professional programs. The fee increases applied to both new and continuing students. Again, however, the public information provided by the University did not mention the University’s policy of maintaining the level of professional degree fees constant for continuing students or state that the University was abandoning that policy. Even after the July 2003 decision to

increase fees, the University's official fee guides and budget documents continued to state that professional degree fee increases would apply to new students only.

At the time of both the December 2002 and July 2003 fee increases, the University had said nothing to the general public or to incoming students about whether the University intended to impose professional degree fee increases in 2004-2005 or any future years, not only on incoming professional degree students but also on continuing students. Several weeks before the Regents voted in July 2003 to increase fees, the University President sent a letter to the Regents regarding the increases. In the letter, which was made available to the public on the University Web site, the President anticipated that any budget shortfalls for the 2004-2005 academic year could be addressed by reducing enrollment instead of raising fees.

During the period from December 2002, when the Regents voted to increase fees, until August 25, 2003, the date by which all class members had accepted UC's offers of admission, the University was communicating individually with incoming class members, including transmitting individual letters offering admission and financial aid. None of those individualized communications mentioned the professional degree fee or explained that the University had rescinded or no longer intended to honor its longstanding policy that increases in professional degree fees would apply to new students only.

Changes in University Publications after Class Members Accepted Admission

On July 24, 2003, a group of current or former students filed the *Kashmiri* action in which they challenged the professional degree fee increases for Spring 2003 and the 2003-2004 academic year. (See *Kashmiri*, *supra*, 156 Cal.App.4th at 819.) After the *Kashmiri* action was filed, the University altered some of its existing publications. In particular, a revised version of the 2002-2003 edition of the official fee guide was posted online in September 2003—months after the 2002-2003 academic year had ended—to remove the language describing the policy of applying professional degree fee increases to incoming students only. In the section of the 2002-2003 official fee guide addressing the professional degree fee, the revised version also added the disclaimer, “**Fees are**

subject to change without notice.” The revised 2002-2003 official fee guide did not discuss the previous policy or explain whether it had been revoked or modified.

On August 25, 2003, the University published the 2003-2004 version of the official fee guide for the first time. By virtue of the class definition in this case, all class members had accepted UC’s offers of admission by that date. The University deleted from that version of the fee guide the language—which had been included in versions of the guide since the 1996-1997 edition—describing the policy in existence since 1994 that professional degree fee increases would only be applied to incoming students. Again, the official fee guide did not discuss the previous policy or explain whether it had been revoked or modified.

Increases in the Professional Degree Fee After Class Members Enrolled

The University has identified 2,833 class members who first enrolled in a UC professional degree program in the 2003-2004 academic year and who were charged a professional degree fee for that year. In May 2004, well after class members first enrolled in their programs, the Regents approved student fee increases for the 2004-2005 academic year. The increases in the professional degree fee, which applied to all new and continuing students, were substantial. In the case of a law student at Boalt Hall, the Regents raised the fee from \$9,743 to \$14,473, an increase of nearly 53 percent. The professional degree fee applicable to medical students was raised from \$8,173 to \$12,673, an increase of slightly over 55 percent. Students in the veterinary medicine and pharmacy programs saw their professional degree fees increased by roughly 61 percent and nearly 107 percent, respectively, from the 2003-2004 academic year to the 2004-2005 academic year. The Regents raised certain professional degree fees again for all new and continuing students in the 2005-2006, 2006-2007, 2007-2008, and 2008-2009 academic years, although the increases from year to year were more modest than the increases imposed in the 2004-2005 academic year.

Procedural History

On July 12, 2005, respondents—four current or former UC students in professional degree programs—filed this action on behalf of a putative class of

professional school students who accepted the University's offer of admission in or before September 2003, who first enrolled during the 2003-2004 academic year or thereafter, and whose professional degree fee was raised after their initial enrollment in that program. The complaint contained a single cause of action alleging breach of contract. Respondents alleged that a contract existed between them and the University that included a commitment to maintain the professional degree fee at the same level for continuing students for the duration of their enrollment. They further alleged the University had breached the contract by increasing the professional degree fee imposed on continuing students during the 2004-2005 academic year and in subsequent academic years.

The trial court twice denied motions for preliminary injunctive relief seeking to restrain the University from increasing the professional degree fee charged to class members and to roll back the professional degree fee to the level charged during the 2003-2004 academic year.

Respondents filed a motion to certify a class. The University opposed class certification, arguing that the case raised individualized rather than common issues because contract liability depended upon whether individual students had actual knowledge at the time they accepted their offers of admission that the University had increased the professional degree fee for previous classes of students in December 2002 and July 2003. The trial court rejected the argument and certified a class defined as follows: "Current and former University of California students subject to the Fee for Selected Professional School Students (also known as the 'professional degree fee') who accepted the University's offer of admission prior to August 25, 2003, and first enrolled in their University of California professional degree program in the Summer 2003 term or thereafter, and whose professional degree fee was raised after their initial enrollment in the program." The University filed a writ petition challenging the class certification order, which this court summarily denied.

The University subsequently filed a motion seeking to certify two subclasses. It argued there were significant factual differences between the claims asserted by the two

proposed subclasses. Specifically, it claimed that only two of the UC professional schools—Boalt Hall and the UCSF School of Nursing—had included in catalogs or Web sites for the 2003-2004 academic year a statement that the professional degree fee paid by continuing students would remain constant for the duration of their enrollment. The trial court granted the University’s request and subdivided the previously certified class into two subclasses, consisting of (1) professional students who otherwise met the class definition and who enrolled at Boalt Hall or the UCSF School of Nursing, and (2) all other class members who had not enrolled at either Boalt Hall or the UCSF School of Nursing. Thus, the creation of the subclasses did not alter the number of class members but simply divided them into two groups.

The parties filed cross-motions for summary judgment or summary adjudication of the claims asserted by the two subclasses. The motions were based primarily on an extensive joint stipulation of facts. In a lengthy and detailed order, the trial court granted respondents’ motion for summary judgment, or in the alternative for summary adjudication, with respect to each subclass, and denied the University’s cross-motions in full.

With respect to liability, the trial court applied the contract law analysis set forth by Division Two of this court in *Kashmiri*. The court concluded “as a matter of law, the contracts between the Plaintiff students and the University included a binding commitment not to raise the professional degree fees for continuing students. It was reasonable for students who accepted the University’s offer of admission prior to August 25, 2003 to believe that the statement regarding the University’s professional degree fee policy, as set forth in the last publicly available Official Fee Guide, would apply to them. In other words, at the time that the Plaintiffs accepted the University’s offers of enrollment, they reasonably believed and reasonably expected, from the only then publicly available official University publications directing their attention to professional degree fees, that their professional degree fees would remain the same for the duration of their enrollment in their professional programs.”

In reaching its conclusion, the trial court clarified that it was not treating language that appeared in the Regents' proposed budget as part of the writings that form the contract between respondents and the University. The court "agree[d] with the University's contention that the Regents' budget is not the type of publication that the University reasonably could have expected students to rely upon—or that students could have reasonably relied upon—in making financial or attendance decisions."

The court rejected the University's argument that it had never made a "specific promise" to the incoming 2003-2004 class that it would keep the professional degree fee constant. The University had argued that each official fee guide applies only to the then-current academic year, and that students "could not reasonably have expected that policies set out in the 2002-03 edition of the Official Fee Guide would apply to them when they enrolled in" the 2003-2004 academic year. In disposing of the University's argument, the trial court first observed that *Kashmiri* does not require a "specific promise" in order to give rise to a binding commitment. In addition, the court held that "a reasonable student accepting the University's offer of admission prior to August 25, 2003, would have expected the professional degree fee policy set forth in the then-current edition of the Official Fee Guide to apply to them." Further, among other reasons for rejecting the University's position, the court observed that nothing in the official fee guide indicated that the University's fee policies as described in the guide expired at the end of each academic year. The court continued: "Had the University wanted to rescind this [professional degree fee] policy for incoming students, it easily could have unequivocally explained to incoming students that it was abandoning the PDF policy in place since 1994 and would no longer apply increases in the professional degree fee only to incoming students. But it never did."

The court's ruling applied to all class members regardless of their subclass. The court concluded that all students "would have reasonably understood the University's representations regarding its fee policies, as set forth in its Official Fee Guide . . . to apply to them." According to the court, the subclass consisting of "Boalt and UCSF nursing students simply have additional evidence to support their claims."

The court applied the same measure of damages that had been affirmed on appeal in *Kashmiri*. It measured damages as the professional degree fee amount charged to class members above the amount of the professional degree fee when they first enrolled, less the amount of grant aid to students that the University demonstrated was increased as a result of the fee increases.

On April 2, 2010, the trial court entered judgment against the University in the total amount of \$39,417,363, composed of damages in the amount of \$27,196,920 plus prejudgment interest totaling \$12,220,443. The University timely appealed from the judgment.

DISCUSSION

I. *Standard of Review*

A court properly grants summary judgment if the record establishes no triable issue as to any material fact and the moving party is entitled to judgment as a matter of law. (Code Civ. Proc., § 437c, subd. (c).) We review orders granting or denying a summary judgment motion de novo. (*Union Bank v. Superior Court* (1995) 31 Cal.App.4th 573, 579.) “In reviewing an order granting summary judgment, we must assume the role of the trial court and redetermine the merits of the motion. In doing so, we must strictly scrutinize the moving party’s papers. The declarations of the party opposing summary judgment, however, are liberally construed to determine the existence of triable issues of fact. All doubts as to whether any material, triable, issues of fact exist are to be resolved in favor of the party opposing summary judgment. While the appellate court must review a summary judgment motion by the same standards as the trial court, it must independently determine as a matter of law the construction and effect of the facts presented. [Citation.]” (*Cochran v. Cochran* (2001) 89 Cal.App.4th 283, 287.)

The University also challenges the measure of damages adopted by the trial court. The question of the proper measure of damages presents of question of law that this court reviews de novo. (*Toscano v. Greene Music* (2004) 124 Cal.App.4th 685, 691.) “The amount of damages, on the other hand, is a fact question committed to the discretion of the trial judge” (*Ibid.*)

Finally, the University contends the trial court erred when it certified a class. We review a trial court's ruling on a certification motion for abuse of discretion. (*Sav-On Drug Stores, Inc. v. Superior Court* (2004) 34 Cal.4th 319, 326.)

II. *The University's Published Policy of Applying Increases in the Professional Degree Fee to New Students Only Became a Term of its Implied Contract with Class Members When They Accepted the University's Offers of Admission.*

The University's challenge to the trial court's grant of summary judgment primarily turns upon its claim that it never made a specific promise to class members that it would maintain the professional degree fee at the same level during the duration of their enrollment. More specifically, the University argues it was unreasonable for class members to believe that a commitment expressed in the 2002-2003 edition of the official fee guide would apply to students who first enrolled in the 2003-2004 academic year. It also contends the trial court erred by failing to consider the totality of the circumstances in assessing whether an implied contract had been formed. The University claims class members could not reasonably expect it to be bound to continue a practice applied in prior years in light of evidence that the University had twice raised the professional degree fee for all continuing students. It also relies upon the express disclaimer that fees were subject to change without notice, a warning it argues should have been given effect by the trial court.

The parties to this appeal agree that the contract principles discussed in *Kashmiri* provide the framework for our analysis. The dispute is over whether the pertinent facts presented in this action are sufficiently different from those presented in *Kashmiri* so as to yield a different result. Therefore, the proper starting point for our discussion is the decision in *Kashmiri*.

A. *Kashmiri Establishes that the Terms of the Implied Contract Between the University and a Student Are Established at the Time the Student Accepts the University's Offer of Admission.*

In *Kashmiri*, the court reaffirmed that the legal relationship between a university and its students is contractual in nature. (*Kashmiri, supra*, 156 Cal.App.4th at pp. 824-

827; see also *Zumbrun v. University of Southern California* (1972) 25 Cal.App.3d 1, 10; *Andersen v. Regents of University of California* (1972) 22 Cal.App.3d 763, 769.) The court rejected the notion that the students entered into an express contract with the University. Instead, an implied-in-fact contract arises when a student accepts the University's offer of admission. (*Kashmiri*, at pp. 828-829.) At the time an applicant accepts an offer of admission, that person is assumed to have reviewed the University's offer of admission, as well as the materials and publications made available by the University. By accepting the offer of admission, the student has chosen to forgo opportunities to attend other schools or pursue other options. (Cf. *Armstrong World Industries, Inc. v. Superior Court* (1989) 215 Cal.App.3d 951, 958 [promise to forbear from pursuing other legal options constitutes consideration to support a contract].) Both parties benefit from this bargain—students secure their enrollment in a degree program, and the University ensures the attendance of students it seeks to attract.

“The existence of a contract between the students and the university is implied in fact, and the question whether the parties' conduct creates such an implied agreement is generally ‘ “a question of fact.” ’ [Citation.] Since the existence of the contract is implied in fact, the provisions of this contract are also implied in fact. ‘Implied contractual terms “ordinarily stand on equal footing with express terms.” ’ [Citation.]” (*Kashmiri*, *supra*, 156 Cal.App.4th at p. 829.)

The terms of the implied contract between a university and its students are typically found in university bulletins and other publications, although “ ‘ “custom and usages can also become specific terms by implication.” ’ [Citation.]” (See *Kashmiri*, *supra*, at p. 828.) The court in *Kashmiri* cautioned that, although “[u]niversities frequently publish numerous catalogues and bulletins, but not all statements in these publications amount to contractual obligations.” (*Id.* at p. 829.) Rather, under standard rules of contract interpretation, whether statements in catalogues or Web sites become a term of the implied-in-fact contract depends upon the parties' reasonable expectations in light of the totality of the circumstances. (*Id.* at pp. 829, 832.) “Cases involving

contractual obligations of colleges based upon language in catalogues or handbooks focus on what is reasonable. [Citation.]” (*Id.* at p. 832.)

“The reasonableness of the student’s expectation is measured by the definiteness, specificity, or explicit nature of the representation at issue. [Citation.]” (*Kashmiri, supra*, 156 Cal.App.4th at p. 832.) “[C]ourts have not interpreted general and vague declarations or promises in university publications as creating contractual obligations.” (*Ibid.*) The court in *Kashmiri* distinguished between a general statement or expectation, which would not be a term of the implied-in-fact contract, and a specific or unequivocal promise, which would be enforceable. (See *id.* at pp. 826, 831.)

The parties’ reasonable expectations are measured as of the time the contract is formed. (*Kashmiri, supra*, 156 Cal.App.4th at p. 832; see also *id.* at p. 831 [“we must ‘give effect to the mutual intention of the parties as it existed’ at the time the contract was executed”].) Thus, the focus in assessing the terms of the implied-in-fact contract is upon the parties’ reasonable expectations in light of the totality of the circumstances at the time a student accepts an offer of admission and thereby forms a contract.

In *Kashmiri*, the court concluded that because the University’s statement promising not to raise the professional degree fee was sufficiently specific, unequivocal, and unqualified, “the reasonable expectation of the parties would be that once the student enrolls in the University and the University accepts his or her payment of the PDF, the PDF will remain the same of the duration of the student’s enrollment in that program.” (*Kashmiri, supra*, 156 Cal.App.4th at p. 833.) The court observed, “It is reasonable that an institution of higher education would promise not to increase the PDF for continuing students in exchange for the student’s promise to attend that institution.” (*Ibid.*) The court also stated that “[s]tudents at UC presumably made choices about which professional program to attend based on the University’s promises about fees.” (*Id.* at p. 841.)

The *Kashmiri* court rejected the University’s contention that its policy regarding increases in the professional degree fee was binding for one academic year only. (See *Kashmiri, supra*, 156 Cal.App.4th at pp. 839-841.) The court stated: “The contractual

relationship between students and educational institutions can encompass promises that expire at the end of the term and other promises that extend throughout the student's enrollment in the program. When an institution of higher learning makes a promise that extends for the entire length of a student's enrollment in the institution or program, courts have not limited the agreement to a single term or semester.” (*Id.* at p. 840.) In support of its conclusion that the promise not to raise the professional degree fee extended beyond the current academic year, the *Kashmiri* court noted that, unlike promises that do not contain a time period and presumptively apply only to the year in which they are made, the promise not to raise the professional degree fee expressly stated it would apply for the duration of a student's enrollment. (*Id.* at p. 841.)

The court in *Kashmiri* also rejected the University's claim that it could disregard its commitment to maintain professional degree fees constant for continuing students in light of its general disclaimer that fees could be changed without notice. (*Kashmiri, supra*, 156 Cal.App.4th at pp. 833-834.) The court relied upon the general principle in contract interpretation that “ ‘a particular intent will control a general one that is inconsistent with it.’ [Citation.]” (*Id.* at p. 833; see Civ. Code, § 1650.) The court also observed that the University had complete control over the language it used in its catalogues and on its Web sites. Under standard rules of contract interpretation involving uncertainty not resolved by other rules, “ ‘the language of a contract should be interpreted most strongly against the party who caused the uncertainty to exist.’ [Citations.]” (*Kashmiri, supra*, 156 Cal.App.4th at p. 834.) According to the court, “[i]f the University intended to retain the right to raise the PDF for continuing students, it should have so specified.” (*Ibid.*) Thus, the University could not complain that its more specific promise not to raise the professional degree fee for continuing students took precedence over its general disclaimer that fees could change without notice. (*Ibid.*)

B. *It Was Reasonable for Class Members to Believe When They Accepted Admission that the University Would Adhere to Unambiguous Policy Language Published in the Last Publicly Available Official Fee Guide.*

During the entire time period that class members were offered and accepted admission throughout the 2002-2003 academic year, the University described its policy with respect to the professional degree fee as follows in the official fee guide: “In addition to the Educational Fee, the University Registration Fee, and miscellaneous campus based fees, *effective Fall 1994*, a Fee for Selected Professional School Students also is assessed to students enrolled for the first time in the graduate professional degree programs The Fee is being phased in over time. *Increases in the Fee apply to new students only. The Fee will remain the same for each student for the duration of his or her enrollment in the professional degree program.*” (Italics added.)

The central question posed in this appeal is whether the University’s commitment not to raise the professional degree fees for continuing students, as published in the University’s official fee guide at the time class members accepted offers of admission, became a term of the implied contract between class members and the University.⁴

The University contends the 2002-2003 edition of the official fee guide did not contain any specific promise regarding fees to be paid by students entering in the 2003-2004 academic year. According to the University, it should have been clear to anyone visiting the Web site that the official fee guides were prepared annually and that the 2002-2003 edition of the official fee guide was intended to apply to that academic year and no other.⁵ The University claims that no class member intending to enroll in the

⁴ The *Kashmiri* court considered an analogous issue: “The pivotal question is whether the statements in the catalogues and on the University’s Web site not to raise the PDF for continuing students became a term of the implied-in-fact contract between the professional student subclass and the University.” (*Kashmiri, supra*, 156 Cal.App.4th at p. 831.)

⁵ The University’s own conduct belies its contention that the official fee guide is an annual publication that any reasonable person would understand contains information that is not updated to reflect current policies. Specifically, as the record here demonstrates, the University amended its 2002-2003 version of the official fee guide in September

2003-2004 academic year could have reasonably believed that statements contained in the 2002-2003 version of the official fee guide would apply to them. We disagree with the conclusions the University has drawn from the 2002-2003 official fee guide.

The University characterizes the language describing the professional degree fee policy in the 2002-2003 official fee guide as creating only “*hope or expectation.*” Yet, the content of the policy is no different from what the *Kashmiri* court described as “not qualified” and “unequivocal.” (See *Kashmiri, supra*, 156 Cal.App.4th at p. 833.) What the University means, apparently, is that at the time class members were deciding where to attend professional school, the University did not clarify publicly to whom its policy was intended to apply.

The language the University used in the official fee guide—that the policy was “effective Fall 1994” and “[t]he Fee is being phased in over time”—unambiguously describes a policy that began in 1994 and remained in effect. Further, in describing the policy, the official fee guide did not expressly limit its application to the 2002-2003 academic year or to students first enrolling in that academic year. The official fee guide did not contain an expiration or ending date for the policy. Instead, the language of the official fee guide described a policy that was both longstanding (since 1994) as well as forward-looking, in that it expressly applied beyond the current academic year for continuing students. Moreover, nothing in the fee guides or in any other University publication or Web page indicates that fee policies described in those guides generally terminate or expire at the end of each academic year.

It is true, as the University contends, that the 2002-2003 official fee guide specified the professional degree fee amounts charged in the 2002-2003 academic year. The trial court acknowledged that the specific fee amounts apply to a particular year only. The University characterizes this acknowledgment as a “glaring discrepancy” in the trial court’s reasoning because it shows that one could not reasonably expect the information

2003—months after the 2002-2003 academic year ended—to delete the language referring to a commitment to maintain the professional degree fee at a constant level for continuing students.

contained in the official fee guide to apply beyond the 2002-2003 academic year. We disagree.

It is apparent from reading the 2002-2003 version of the official fee guide that the amount of the professional degree fee had changed over time. Indeed, the fee amounts contained in the official fee guide tended to reinforce the understanding that continuing students would pay the same professional degree fee for the duration of their enrollment. For each professional school, the 2002-2003 official fee guide listed separate professional degree fee amounts for students admitted in each academic year dating back to Fall 1994. In the case of law students, for example, the guide indicated that students admitted for 1994-1995 paid professional degree fees of \$2,000 in the 2002-2003 academic year, whereas students admitted in later years paid amounts varying from \$4,000 to \$6,000.

A class member reading the 2002-2003 version of the official fee guide would have had no reasonable expectation the fee charged in the 2002-2003 academic year would also apply in the following academic year. The guide expressly stated the fee was for “2002-03” and showed that students paid different professional degree fees depending upon the academic year in which they were admitted. By contrast, the policy statement describing the commitment to keep professional degree fees constant for continuing students contained no such time limitation. In short, there is no inconsistency in distinguishing between fee amounts and fee policies contained in the official fee guides.⁶ Although class members could have had no reasonable expectation that specific fee amounts charged to entering students would remain unchanged from year-to-year, the

⁶ Although the University claims the 2002-2003 version of the official guide was an annual document limited to the academic year in which it was published, elsewhere it claims the general disclaimer that fees could be changed at any time—a disclaimer contained in the 2002-2003 version of the official fee guide—should have been taken into account when determining whether the professional degree fee policy became an implied-in-fact term of the contract between class members and the University. The University cannot have it both ways. Either the fee policies described in the 2002-2003 version of the official guide applied to class members or they did not. While it was reasonable for class members to be aware of the general disclaimer that fees could be changed, it was also reasonable for class members to rely on the more specific promise that professional degree fees would remain unchanged for continuing students.

policies described in the official fee guide gave rise to a reasonable expectation that the University would honor its longstanding commitment to apply increases in the professional degree fee to new students only.

To the extent the 2002-2003 version of the official fee guide was ambiguous as to whether the commitment to keeping the professional degree fee constant for continuing students would apply to students entering in the 2003-2004 academic year, any ambiguity was of the University's own making. As the court observed in *Kashmiri*, the University had complete control over the language it chose to include in its catalogues and on its Web sites. (*Kashmiri, supra*, 156 Cal.App.4th at p. 834.) Because uncertain language not clarified by resort to other rules of contract interpretation must be interpreted against the party who caused the uncertainty to exist (*ibid.*), we resolve any uncertainty in the application of the professional degree policy, as contained in the 2002-2003 version of the official fee guide, against the University and in favor of the class members. The University could have clarified the application of its longstanding policy—which on its face did not expire and was not limited to a particular academic year—but did not.

On a related point, the University contends the trial court erroneously shifted the burden to the University to prove that it had informed class members of the change in practices. The University claims the trial court “effectively relieved [respondents] of the burden to prove each element of [the] cause of action” and instead placed the burden on “the University to *disprove* the existence of a contract.” To the contrary, the trial court simply noted, consistent with the decision in *Kashmiri*, that the University had complete control over what it chose to convey to prospective students in its catalogues and Web sites. The court did not suggest the University was required to disprove the existence of a contract. Rather, the court's observation related to the University's obligation to clarify any uncertainty that it caused to exist.

The University also contends no contract was formed until it announced fees for the 2003-2004 academic year and published that information in the 2003-2004 edition of the official fee guide. The argument lacks merit. By virtue of the class definition, every member of the class accepted the University's offer of admission before August 25, 2003,

the date on which the University first published the 2003-2004 version of the official fee guide. As explained in *Kashmiri*, the terms of the implied contract between the students and the University are measured by the parties' reasonable expectations at the time the contract is formed, which is when a student accepts an offer of admission. (*Kashmiri*, *supra*, 156 Cal.App.4th at p. 832.) Therefore, policy statements contained on Web sites or documents first published *after* class members accepted admission do not bear upon the parties' reasonable expectations at the time the contract was formed. Class members had a reasonable expectation that the professional degree fee policy described in the 2002-2003 version of the official fee guide would be applied to them, absent any indication to the contrary in communications they received from the University.

As discussed above, the parties' reasonable expectations at the time they accepted admission did not extend to the specific fee amount the University might charge in the 2003-2004 academic year. The *Kashmiri* court recognized that the University is not required to charge students the price advertised at the time of admission: "We agree that educational institutions retain the right to raise the fees when that is specified in their catalogues or other publications as long as the increase is reasonable and does not violate any duty of good faith and fair dealing." (*Kashmiri*, *supra*, 156 Cal.App.4th at p. 831.) Thus, at the time class members accepted admission, the specific price for the first year of enrollment was undefined, limited only by the University's duty to deal in good faith with incoming students. The same conclusion does not apply to the fee policy committing the University to hold constant the professional degree fee for continuing students. That policy was specifically set forth in the 2002-2003 version of the official fee guide, which was the last publicly available edition of that publication at the time class members accepted offers of admission.

The University seeks to distinguish the facts of this case from those in *Kashmiri*, yet a closer examination reveals that the purported distinctions are either non-existent or inconsequential. For example, the University claims that in *Kashmiri* the promise not to raise the professional degree fee for continuing students was contained in various Web sites and professional school catalogs, suggesting that the policy was conveyed to

prospective students in many more publications than in this case. According to the University, aside from promises made in catalogues and Web sites published by Boalt Hall and the UCSF School of Nursing, the promise in this case was limited to “two sentences” contained in the prior year’s official fee guide. Yet, a closer look at *Kashmiri* suggests the publications containing the promise were much the same as in this case. In describing the publications that contained the professional degree fee policy, the *Kashmiri* opinion refers to the official fee guide, annual budget documents, and Boalt Hall catalogues. (*Kashmiri, supra*, 156 Cal.App.4th at pp. 816-817.) In a footnote, the court identified four additional publications containing the promise: (1) the medicine bulletin for UCSF, (2) catalogues and Web sites for the UCSF School of Nursing, (3) the UC Davis School of Medicine Web site, and (4) Boalt Hall’s student resource guide for the 2003-2004 academic year. (*Id.* at p. 817, fn. 3.) Thus, setting aside the UCSF bulletin and the UC Davis School of Medicine Web site, the publications and Web sites that contained the professional degree fee policy in *Kashmiri* were the same as the publications and Web sites at issue here. If we disregard budget documents,⁷ the sole University publication available to most professional school applicants in *Kashmiri* that described the University’s professional degree fee policy was the official fee guide, just as it is here.

As set forth in *Kashmiri*, the implied contract between class members and the University was formed at the time class members accepted offers of admission. (*Kashmiri, supra*, 156 Cal.App.4th at pp. 828-829, 831.) In *Kashmiri*, the implied contract included a promise not to raise the professional degree fee for continuing students because that commitment was expressed in the official fee guide published by the University at the time class members accepted admission. Likewise, in this case the unequivocal and unqualified promise to limit increases in the professional degree fee to new students only was contained in the last publicly available official fee guide at the

⁷ We agree with the trial court that UC budget documents are not the type of publications prospective students might consult or rely upon in making financial and attendance decisions.

time class members accepted offers of admission. Just as in *Kashmiri*, this policy became an implied-in-fact term of the University's contract with class members. We therefore conclude that the University's commitment not to increase the professional degree fee for continuing students for the duration of their enrollment is an implied term of the contract between the University and class members.⁸

C. The Fact the University Had Twice Raised the Professional Degree Fee for Continuing Students Did Not Undermine the Class Members' Reasonable Expectations Based upon a Commitment Expressed in the Official Fee Guide.

The University argues that the trial court failed to consider the totality of the circumstances in assessing whether an implied-in-fact contract was formed. Specifically, it claims the trial court disregarded the significance of the University's conduct in raising the professional degree fee for all continuing students in December 2002 and again in July 2003. The University argues that class members had ample notice the professional degree fee had been increased and that increases had been applied to continuing students. Thus, according to the University, it was unreasonable for class members to expect that the University would continue to apply a policy that it had clearly abandoned.

Evidence that the University twice raised the professional degree fee on continuing students has little bearing upon class members' reasonable expectations. As noted above, University publications describing the fee increases did not mention the longstanding policy that applied increases in the professional degree fee to new students only, did not indicate that the University had changed or rescinded that policy, and did not discuss whether the University would adhere to that policy in the future. Further, even after the two increases, the University continued its online publication of the official fee guides and budget documents, which stated that the University would apply increases

⁸ Because our conclusion rests upon language contained in the official fee guide, it is unnecessary to base our decision upon publications specific to Boalt Hall and UCSF School of Nursing. As the trial court observed, members of the subclass involving Boalt Hall and UCSF School of Nursing "simply have additional evidence to support their claims."

in the professional degree fee to new students only. The University's publications discussing the fee increases were not directed to prospective students, and there is no reason to believe such generalized University publications would have been consulted by persons applying for admission to UC. In addition, even though the University was communicating individually with incoming class members during the time when the two fee increases were approved, none of those individualized communications mentioned the professional degree fee or explained that the University had rescinded or no longer intended to honor its longstanding policy that increases in professional degree fees would apply to new students only.

While the University's conduct may bear upon the terms and existence of an implied-in-fact contract (*Kashmiri, supra*, 156 Cal.App.4th at p. 832), the conduct must necessarily be directed at or conveyed to class members in order to have any bearing upon class members' reasonable expectations. Here, there is insufficient evidence that class members would have been aware of the fact or significance of the two fee increases. Even if class members were generally aware that the University had raised certain fees, the explanations given were inadequate to convey that the University had abandoned its longstanding policy of maintaining professional degree fees at a constant level for continuing students. We conclude that the University's conduct in twice raising professional degree fees for continuing students did not upset the reasonable expectations of class members, who were entitled to rely on the unqualified statements contained in the official fee guide.

D. *The Generalized Disclaimer that Fees Were Subject to Change Without Notice Did Not Override the More Specific Commitment to Maintaining Professional Degree Fees at a Constant Level for Continuing Students.*

In *Kashmiri*, the University argued that its generalized disclaimers that "[f]ees are subject to change without notice" defeated any reasonable expectation students had based on language contained in the official fee guide and other University publications. (*Kashmiri, supra*, 156 Cal.App.4th at pp. 816, 833-834.) As noted above, the *Kashmiri* court rejected the argument, holding that the more specific promise not to raise

professional degree fees for continuing students controlled over the more generalized disclaimer. (*Id.* at p. 834.) Among other things, the court noted that the interpretation urged by the University would render meaningless the specific promise not to raise the professional degree fee for continuing students. (*Ibid.*)

The University now attempts to resurrect the disclaimer argument, asserting that the general disclaimer should be given effect here because there was no specific promise made to class members not to raise professional degree fees. We disagree. Just as in *Kashmiri*, the promise not to raise professional degree fees for continuing students—as contained in the last publicly available official fee guide—was sufficiently specific to constitute an implied term of the contract between the University and individual class members. The promise here was no less specific than the one at issue in *Kashmiri*. Accordingly, just as in *Kashmiri*, the more specific contractual term takes precedence over the more generalized one. (*Kashmiri, supra*, 156 Cal.App.4th at p. 834.)

E. *Because No Triable Issues of Fact Exist, Reversal is Not Required.*

The University next contends that, at a minimum, the trial court should have denied respondents’ motion for summary judgment on the ground there are disputed questions of fact. We are not persuaded.

The University cites *Kashmiri* for the proposition that whether the parties’ conduct gives rise to an implied-in-fact agreement is generally a question of fact. (*Kashmiri, supra*, 156 Cal.App.4th at p. 829.) It then claims the “record gives rise to a host of questions regarding the reasonableness of class members’ purported expectations.” Among the facts the University identifies are (1) the fee increases approved by the Regents in December 2002 and July 2003, (2) the generalized disclaimer regarding fees being subject to change without notice, (3) the fact the 2003-2004 version of the official fee guide did not contain the promise to apply increases in the professional degree fee to new students only, (4) no publications for the 2003-2004 academic year other than ones specific to Boalt Hall and UCSF School of Nursing contained the promise not to raise professional degree fees for continuing students, and (5) members of the class were on notice of prior fee increases.

The facts identified by the University are undisputed. The issue here is the legal significance of those facts. The University points out that summary judgment is not proper unless “only one reasonable conclusion can be drawn from the undisputed facts” (See *Kovatch v. California Casualty Management Co.* (1998) 65 Cal.App.4th 1256, 1275, disapproved on other grounds in *Aguilar v. Atlantic Richfield Co.* (2001) 25 Cal.4th 826, 853, fn. 19.) The only reasonable conclusion that can be drawn from the undisputed facts here is the conclusion we have reached in this opinion. For reasons we have explained, the facts identified by the University are, as a matter of law, immaterial to the question of the class members’ reasonable expectations. Therefore, there are no triable issues of material fact that would preclude entry of summary judgment in favor of respondents.⁹

III. *The Trial Court Applied the Proper Measure of Contract Damages.*

The trial court calculated damages in the same manner as in *Kashmiri*. The initial measure of damages was the amount of the increase in professional degree fees charged to class members. The parties stipulated to this amount, totaling over \$29 million. The court offset this sum by the amount by which grant aid awarded by the University had increased *as a result* of the increase in the professional degree fee. On the basis of discovery conducted in this action, the parties stipulated that a reasonable, good faith estimate of the amount of the offset was 7 percent of the amount of the contested fee increases. After the offset, the damage award totaled \$27,196,920 before the addition of prejudgment interest.

In *Kashmiri*, the trial court rejected the University’s argument that the plaintiffs’ recovery should be reduced by all grant aid awarded, including amounts that students would have received even if the University had not increased the fees. (*Kashmiri, supra*,

⁹ Following the close of briefing in this appeal, respondents moved for leave to file a surreply, claiming that the University had mischaracterized aspects of the *Kashmiri* decision in its reply brief. We deferred consideration of the motion pending review of the merits of the appeal. In light of our analysis and the disposition we have reached, it is unnecessary to consider the arguments raised in respondents’ surreply. Accordingly, we deny the motion.

156 Cal.App.4th at p. 848.) On appeal, the University abandoned its argument that damages should be reduced by all financial aid received, regardless of source, and instead claimed the damages award should be reduced by amounts of aid actually provided by the University, as distinguished from financial aid provided from other sources. (*Id.* at p. 849.) However, the University conceded that the factual record did not provide a basis for distinguishing between gift aid provided by the University and that provided by third-party sources. The appellate court rejected the University’s challenge to the award of damages on the ground it could not support its new argument with evidence from the record. (*Ibid.*)

In this appeal, the University has revived the argument the Court of Appeal rejected in *Kashmiri* for lack of an adequate record. It claims the amount of the fee increases should be reduced by the *total* amount of grant aid provided to class members by the University during the years when the fee increases were imposed. For reasons we shall explain, the University’s proposed measure of damages is insupportable and inconsistent with principles of contract law.

“The basic object of damages is compensation, and in the law of contracts the theory is that the party injured by a breach should receive as nearly as possible the equivalent of the benefits of performance. (Civ. Code, § 3300.^[10]) The aim is to put the injured party in as good a position as he or she would have been had performance been rendered as promised. [Citation.]” (*Kashmiri, supra*, 156 Cal.App.4th at p. 848; see also 1 Witkin, Summary of Cal. Law (10th ed. 2005) Contracts § 869, p. 956.) “[D]amages recoverable may sometimes be subject to deductions for benefits received. [Citation.]” (1 Witkin, Summary of Cal. Law, *supra*, Contracts § 922, p. 1019.) It is the defendant’s burden to establish the amount of any offset, or mitigation, to be applied against the

¹⁰ Civil Code section 3300 provides: “For the breach of an obligation arising from contract, the measure of damages, except where otherwise expressly provided by this Code, is the amount which will compensate the party aggrieved for all the detriment proximately caused thereby, or which, in the ordinary course of things, would be likely to result therefrom.”

initial measure of contract damages. (*Mass v. Board of Education* (1964) 61 Cal.2d 612, 627-628; accord *Kashmiri, supra*, 156 Cal.App.4th at p. 848.)

In support of its damages theory, the University relies on case law establishing that a plaintiff who suffers no detriment or out-of-pocket loss as a result of a breach of contract is not entitled to recover damages. (See, e.g., *Bramalea California, Inc. v. Reliable Interiors, Inc.* (2004) 119 Cal.App.4th 468, 472-473 [plaintiff who suffered no out-of-pocket loss did not have actionable breach of contract claim]; accord *Emerald Bay Community Assn. v. Golden Eagle Ins. Corp.* (2005) 130 Cal.App.4th 1078, 1088-1089; *Patent Scaffolding Co. v. William Simpson Constr. Co.* (1967) 256 Cal.App.2d 506, 511.) The cases relied upon by the University distinguish between tort and contract damages. In the tort context, the collateral source rule allows an injured party to recover for damages suffered even if a third party, such as an insurance company, provided compensation for the injury. (*Bramalea California, Inc. v. Reliable Interiors, Inc., supra*, 119 Cal.App.4th at p. 472.) The collateral source rule, which is punitive, does not apply in an action based on a breach of contract. Application of the collateral source rule in a contract action would violate the principle that no one should reap a windfall from the breach of a contractual obligation. (*Ibid.*; see also *Patent Scaffolding Co. v. William Simpson Construction Co., supra*, 256 Cal.App.2d at p. 511.)

The University claims that class members who received any amount of UC grant or scholarship aid will receive a windfall or double-recovery as a consequence of the trial court's measure of damages. It cites two examples to support its point. First, the University cites the example of a Boalt Hall student who received UC scholarship and grant aid that exceeded the total fees charged to that student. According to the University, that student paid no fees at all and thus suffered no damages. In the other example cited by the University, a UCSF nursing student received UC grant aid of \$2,409 in the 2005-2006 academic year, far exceeding the challenged \$224 increase in the professional degree fee. The University contends that the nursing student did not actually

pay for the increased fees because the student's grant aid far exceeded the amount of any increase.¹¹

The flaw in the University's position is that it fails to take into account the entire cost of attending a professional degree program. Fees may not be viewed in isolation but instead must be seen as one component of the cost of attending a UC professional degree program. As reflected in the parties' set of stipulated facts, the University provides some students, including some class members, with financial aid in the form of grants and scholarships, which are intended to defray the cost of education *and* living expenses. In determining a student's eligibility for need-based aid, the University considers a student's estimated cost of attending a program, which includes not only fees paid to the University, but also costs for room and board, books and supplies, and other assorted expenses for things such as transportation, health insurance, and clothing.

In the example cited by the University in which a Boalt Hall student received grant aid exceeding total fees, the amount of aid exceeding fees was not some fortuitous windfall but was instead intended to defray the student's living expenses. Because part of that student's aid had to be applied to cover the increase in the professional degree fee, the student was damaged by the amount of the increase in the fee; the student would have otherwise received that amount to pay for living expenses.

Further, the same initial measure of damages applies regardless of whether and to what extent a student received grant aid from the University. With respect to each class member, the fee increase raised the overall cost of attending a professional degree program. A student who received no grant aid suffered an out-of-pocket loss in the amount of the fee increase. Likewise, a student who received grant aid suffered the same out-of-pocket loss, because that student had less money to pay for fees and living expenses not otherwise covered by grants and scholarships. Unless the University can demonstrate that grant and scholarship aid provided to a particular class member

¹¹ As the University points out, an award of gift aid effectively reduces a student's fee charges on a dollar-for-dollar basis because grants and scholarships are first applied against student fees.

increased by at least the same amount as the increase in fees, the inevitable conclusion is that all class members suffered a detriment as a result of the fee increase, regardless of whether they received grant and scholarship aid. Consequently, the trial court's measure of damages did not result in a windfall or double recovery for class members who received some form of financial aid from the University.

As the trial court recognized, the University is entitled to an offset for the amount by which grants increased as a result of the fee increases. Because the University was unable to determine for any individual student the amount by which grant aid increased to pay for increased fees, the parties were left to rely on reasonable estimates of the amount by which the University's grants to the class as a whole increased as a result of the contested fee increases. Subtracting this estimate of the increased grant aid from the amount of the professional degree fee increase yields a sum that compensates the class for the detriment they suffered as a result of the University's breach of contract. This damage calculation places class members in the same position they would have been in but for the University's breach.

The University claims the trial court's approach ignores the fact that students have no contractual expectation they will receive a particular amount of financial aid. According to the University, because financial aid is a "gift," it is improper to assume that students have a legally enforceable right to receive any amount of financial aid. In essence, it argues that we should not assume class members would have received a particular amount of financial aid if the professional degree fee had not been increased. Because financial aid is a gift and there is no guarantee a student will receive any financial aid at all, the University contends, the damage amount should be offset by the entire amount of financial aid provided to class members by the University.

The University's argument finds no support in the record and is inconsistent with the parties' stipulated facts. The record available to this court does not support the conclusion that the University expressly or impliedly disavowed any commitment to provide eligible students with need-based aid. In any event, regardless of whether a student has a legally enforceable right to a particular amount of financial aid, the fact

remains that the University stipulated that some class members would have received grants or scholarships from the University even if the professional degree fee had not been increased. Further, the University stipulated that grant aid to class members increased by a particular amount *as a result* of the increases in the professional degree fee. The import of this stipulation is that the University concedes the class would have received a particular amount of grant aid in the absence of the fee increases.

Consequently, we reject the argument that we should subtract from the damage amount the entire amount of financial aid provided by the University to class members. The offset must be limited to the increased amount in grants attributable to the fee increases.

Finally, the University argues that the trial court's measure of damages relieved respondents of their burden to prove the fact and amount of damages. We disagree. The University confuses the initial measure of damages—consisting of the increase in the professional degree fee—with the offset allowed for increased grant amounts given to class members as a result of the fee increase. Respondents satisfied their burden to establish the initial damage amount, which consisted of the aggregate amount of increases in the professional degree fee incurred by class members. It was the University's burden to establish the offset, consisting of the amount by which grant aid increased in response to the increase in fees. (See *Mass v. Board of Education*, *supra*, 61 Cal.2d at pp. 627-628; *Kashmiri*, *supra*, 156 Cal.App.4th at p. 848.) Thus, the trial court did not improperly shift the burden to the University to establish the amount of financial aid attributable to the disputed increase in fees.

We conclude the trial court applied the proper measure of damages to place class members in the position they would have been in but for the University's breach of its obligation to maintain professional degree fees at the same level for the duration of a class member's enrollment. The court therefore properly granted summary judgment to respondents with respect to damages.

IV. *The Trial Court Did Not Abuse Its Discretion in Certifying a Class.*

The University challenges the trial court's certification of a class on the ground that individualized issues predominate over common issues. Specifically, the University

contends there are individual issues concerning whether particular class members knew or were on notice of the University's actions in twice raising the professional degree fee for continuing students. It argues there was no breach of contract as to class members who were aware or on notice of the University's actions, because such class members had no reasonable expectation the University would honor its longstanding commitment to keep professional degree fees at a constant level for continuing students. For the following reasons, we reject the University's contention that it was an abuse of discretion to certify a class.

A party seeking class certification has the burden of demonstrating the “ ‘existence of both an ascertainable class and a well-defined community of interest among the class members.’ [Citation.]” (*Lockheed Martin Corp. v. Superior Court* (2003) 29 Cal.4th 1096, 1104.) “ ‘The community of interest requirement [for class certification] embodies three factors: (1) predominant common questions of law or fact; (2) class representatives with claims or defenses typical of the class; and (3) class representatives who can adequately represent the class.’ [Citation.]” (*Ibid.*) “ ‘The ultimate question in every case of this type is whether . . . the issues which may be jointly tried, when compared with those requiring separate adjudication, are so numerous or substantial that the maintenance of a class action would be advantageous to the judicial process and to the litigants.’ [Citations.]” (*Id.* at pp. 1104-1105.)

As support for its contention that there are individualized issues concerning particular class members' subjective knowledge of the University's conduct, the University primarily relies on two cases, *Chern v. Bank of America* (1976) 15 Cal.3d 866 (*Chern*), and *Fletcher v. Security Pacific National Bank* (1979) 23 Cal.3d 442 (*Fletcher*). Those cases do not aid the University.

In *Chern*, the plaintiff brought a class action against a bank on the ground it had breached its contract to charge interest at a stated annual interest rate. (*Chern, supra*, 15 Cal.3d at p. 870.) In particular, although the plaintiff's promissory note quoted a rate of 9 percent per annum, the actual rate charged was 9.25 percent per annum. The discrepancy resulted from the particular manner in which the bank calculated daily interest—dividing

the annual interest rate by 360 instead of 365—in contrast to federal law requiring that interest be computed on a 365-day year and rounded off to the nearest quarter percent. Notably, at the time the plaintiff was presented with the promissory note specifying a 9 percent rate of interest, she also was shown a “Federal Truth in Lending Statement” setting forth the interest on her loan at the correct rate of 9.25 percent. (*Ibid.*)

The court in *Chern* held that summary judgment was properly granted on the plaintiff’s breach of contract claim. (*Chern, supra*, 15 Cal.3d at pp. 873-875.) The uncontradicted evidence showed that plaintiff knew at the time she entered into her loan contract the particular method the bank used for calculating interest. Her prior knowledge of the bank’s practice defeated her breach of contract claim. Further, she was presented with a written document disclosing the actual interest rate at the time she inspected the promissory note. That written instrument was properly construed as part of the same transaction. Accordingly, the court dismissed the class action breach of contract claim for want of a proper class representative. (*Id.* at p. 874.)

Fletcher involved a similar challenge to the computation of interest on bank loans. In *Fletcher*, unlike in *Chern*, the named plaintiff alleged he had no knowledge of the bank’s practice concerning calculation of the interest rate at the time he entered into a contract to borrow money from the bank. (*Fletcher, supra*, 23 Cal.3d at p. 448.) The *Fletcher* court concluded the named plaintiff was a proper class representative but that class certification was nonetheless improper. The court relied upon the holding in *Chern* that a borrower’s prior knowledge of the disputed banking practice defeated a claim for breach of contract. The court further noted that the defendant bank “freely explained its method of interest computation when asked,” and as a consequence it was reasonable to “infer[] that ‘a number of’ the estimated 50,000 class members would have such prior knowledge of the [contested] banking practice.” Because there was no way to determine whether individual class members had valid contract claims other than by examining each of the individual borrowers, the court concluded that individualized issues predominated over common ones. (*Ibid.*)

The University contends this case is analogous to *Chern* and *Fletcher* because it, too, presents individualized questions of whether particular class members have valid contract claims. Specifically, the University claims that some class members knew or at a minimum were on notice of the fact the University had twice raised the professional degree fee for continuing students. It argues there was no breach of contract as to class members who were aware of the University's conduct.

The University's attempt to analogize this case to *Chern* and *Fletcher* fails. In *Chern*, the defendant provided the plaintiff with a written document disclosing the correct interest rate. In *Fletcher*, it was undisputed that the defendant freely explained the disputed interest rate policy to customers who asked about it. (*Fletcher, supra*, 23 Cal.3d at p. 448.) Here, by contrast, the University never provided any notice, let alone written or individualized notice, to incoming students that it had abandoned or modified its longstanding, published commitment to maintaining the professional degree fee at a constant level for continuing students. Further, as we have noted above, University publications describing the fee increases did not mention the longstanding commitment to apply increases in the professional degree fee to new students only, did not indicate that the University had modified or rescinded the policy, and did not discuss whether the University would adhere to that policy in the future. Thus, even if a class member were aware of the fee increases before accepting an offer of admission, a vague understanding that fees had been raised in some respect—without knowing whether and to what extent the University had changed its policy—would not create an individualized issue as to whether that student was entitled to rely on the unqualified statements contained in the official fee guide. In short, whereas *Chern* and *Fletcher* involved individualized and unequivocal statements that defeated a particular class member's breach of contract claim, the information that supposedly defeats a class member's breach of contract claim in this case was generalized, ambiguous, and not directed at individual class members.

We conclude respondents' breach of contract theory does not turn on the subjective knowledge of individual class members but instead relies on objective indicia of the University's commitment as expressed in publications provided to prospective

students. Because the contract claims present factual issues common to all class members, the trial court did not abuse its discretion in granting class certification.

DISPOSITION

The judgment is affirmed. Respondents shall be entitled to recover their costs on appeal.

McGuiness, P. J.

We concur:

Siggins, J.

Jenkins, J.